PRIVY COUNCIL REPORTS

ISAAC PAUL RATNAM v. LAW SOCIETY OF SINGAPORE

[P.C. (Lord Cross of Chelsea, Lord Simon of Glaisdale and Lord Edmund-Davies) March 2, 1976]

[Privy Council Appeal No. 10 of 1974]

Legal Profession — Advocate and solicitor — Disciplinary proceedings — Conviction for criminal offence — Inquiry Committee investigating on its own motion — Striking off the roll — Failure to notify person concerned of investigation — Investigation a nullity — Instigating the dishonest removal of property — Causing files to disappear — Whether grossly improper conduct — Penal Code, ss. 107, 108A and 201 — Legal Profession Act (Cap. 217), ss. 84, 85, 86, 87, 88, 90, 91, 93, 94 and 98.

Penal Code, ss. 107, 108A and 201 — Abetting an offence abroad — Meaning of "instigation" — Whether communication in Singapore necessary — Causing files to disappear — Meaning of "disappear"

This was an appeal from the decision of the High Court ([1973] 2 M.L.J. 54) which decided that the appellant should be struck off the roll. The appellant appealed to the Privy Council and the main grounds of appeal were (a) in failing to give the appellant notice of the new or renewed inquiry after he was convicted in the Magistrate's Court the Disciplinary Committee had failed to comply with section 87(5) of the Legal Profession Act and this failure vitiated all subsequent disciplinary proceedings against the appellant; (b) despite the fact that the appellant had pleaded guilty and been convicted of the offence of instigating the offence of dishonest removal of property the appellant was not correctly convicted; (c) although the appellant had admitted the charge under section 201 of the Penal Code of causing files to disappear, the appellant had in fact submitted no offence under section 201; (d) the penalty inflicted by the High Court was excessive.

Held, dismissing the appeal; (1) section 87(5) of the Legal Profession Act should be construed as an imperative provision and as the Inquiry Committee had not complied with it the second inquiry by it was a nullity. It did not follow however that all subsequent proceedings before the Disciplinary Committee and the High Court were nullities;

(2) the admitted facts by the appellant before the District Judge justified his acceptance of the appellant's plea of guilty;

(3) as the appellant had admitted that at least part of his purpose in removing the files was to keep them from the police, the High Court was entitled to conclude that the appellant was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Legal Professional Act;

(4) the conclusion of the High Court that part of that conduct fell within the meaning of section 84(2)(a) was vitiated by the earlier procedural error of the Inquiry Committee; but this in their Lordship's view was immaterial in view of the fact that it was throughout relevant to and valid as regards section 84(2)(b);

(5) only a court conversant with the local conditions can judge of the appropriateness of the penalty in circumstances as in this case.

Cases referred to:-

(1) *Howard* v. *Bodington* (1877) 2 P.D. 203 at p. 210.

(2) *Liverpool Borough Bank* v. *Turner* (1860) 2 De G.F. & J. 502.

(3) *Marsh* v. *Marsh* [1945] A.C. 271.

(4) *Cox* v. *Army Council* [1963] A.C. 48.

(5) *Treacy* v. *D.P.P.* [1971] A.C. 537.

(6) *Mohamed Syedol Ariffin* v. *Yeoh Ooi Gark* [1916] 2 A.C. 575; 1 M.C. 165.

(7) *Harbans Lal* v. *The State* A.I.R. 1967 H.P. 10.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Godfrey Le Quesne Q.C. (*Stuart McKinnon* with him) for the appellant.

Robin Auld Q.C. (*Ian Click* with him) for the respondents.

Lord Simon of Glaisdale (delivering the judgment of The Board): appellant, now aged about 33, was at all material times an advocate and solicitor of the Supreme Court, Singapore. From June 1, 1967 to February 29, 1972 he was employed as a Deputy Public Prosecutor and State Counsel in the Attorney-General's Chambers. From September 1971 until February 29, 1972 he was, in addition, Deputy Registrar of Companies and Assistant Registrar of Business Names. On March 1, 1972 to August 15, 1972 the appellant was in private practice: he was legal assistant in the firm of Francis T. Seow.

On April 21, 1972 that firm was instructed to act for a company incorporated and registered in Singapore, known as Gemini Chit-Fund Corporation Limited ("Gemini"). Gemini had branch offices in Malaysia, one being in Kuala Lumpur. On July 29, 1972 the Chairman of Gemini, V. K. S. Narayanan, and the Managing Director, Abdul Gaffar, were arrested in Singapore. On July 31, 1972 Narayanan and Abdul Gaffar were charged in the First Magistrate's Court, Singapore, with abetting Gemini in the commission of the offence of criminal breach of trust in respect of certain funds entrusted to Gemini. On July 31, 1972 the Minister for Finance presented a Petition to the High Court in Singapore for the winding-up of Gemini, the Petition being served on the company on the same day. Between July 29, 1972 and August 1, 1972 the appellant learned successively of the arrest of Narayanan and Abdul Gaffar, the charges preferred against them, and the presentation of the winding-up Petition. On August 2 and 3, 1972 the appellant caused certain files of Gemini, Narayanan and Abdul Gaffar to be removed from Gemini's offices to the appellant's office at the offices of the firm of Francis T. Seow.

On August 3, 1972 the appellant, on the instructions of Abdul Gaffar, wrote and despatched on behalf of the firm of Francis T. Seow a letter to K. K. Kumaran, the general manager of Gemini's branch office in Kuala Lumpur. It was sent by hand for personal delivery. It was in the following terms:

"Dear Sir,

We act for Mr. Gaffar who has instructed us to dispose of the five cars owned by the company, as well as other moveable properties immediately.

In this connection, we have instructions from our clients to appoint Mr. S. Francis Retnam as the agent to effect the aforesaid transactions. Please take proper inventory and acknowledgment prior to handing over these properties to Mr. Retnam and keep them confidentially in your control. At a later date, when the transactions have been completed, please let me have these documents. You may want to note that Mr. Retnam has [sic] given specific instructions as to the disposal of the funds realised from these properties and as such, he has to be allowed custody thereof.

We have been instructed to inform you that Mr. Retnam has been authorised by Mr. Gaffar to proceed to form a Malaysian based Gemini Chit-Fund Corporation Limited and to discontinue operations as a branch of the Singapore company. These instructions are equally applicable to Gemini Travel Service.

Please co-operate with Mr. Retnam and do the needful to effect Mr. Gaffar's instructions.

Yours faithfully,
[sd.] Francis T. Seow"

However, Kumaran ignored the instructions contained in the letter, so that no offence was in fact committed in consequence of the writing and despatch of the letter.

On August 4, 1972 two police officers, with the consent of the appellant, removed from his office most of the files which had come from Gemini's offices.

On August 15, 1972 the appellant was arrested and charged in the First Magistrate's Court with the following two offences:

"(1) That he, on or about the 3rd day of August, 1962, did instigate the General Manager, Gemini Chit-Fund Corporation Limited, Malaysia Branch, Kuala Lumpur, to dishonestly remove property, to wit, five cars and other moveable properties, belonging to the said company, and that he had by virtue of section 108A of the Penal Code committed an offence punishable under section 424 read with section 116 of the said Code; and

(2) That he, on or about the 2nd day of August, 1972, having reason to believe that a certain offence, to wit, criminal breach of trust by an agent had been committed by the Gemini Chit-Fund Corporation Limited, and that such offence was abetted by its directors, Abdul Gaffar and V.K.S. Narayanan, ... did cause certain evidence of the said offence to disappear, to wit, files containing the Gemini Chit-Fund Corporation Limited's correspondence, vouchers, bank statements, chit fund receipts and Abdul Gaffar's personal correspondence, with the intention of screening the said Gemini Chit-Fund Corporation Limited, Abdul Gaffar and V.K.S. Narayanan from legal punishment, and he had thereby committed an offence punishable under section 201 of the Penal Code."

At the time of his arrest the appellant still had in his office two of Gemini's files. The appellant did not disclose them to the police officers who arrested him and searched the office in pursuance of a search warrant.

On his return to his office on bail after he had been arrested and charged as aforesaid and remanded the appellant arranged with M. Rashad, Gemini's accountant, to collect those two files, which he did on the following day. However, they were almost immediately handed over to the police.

Since the next event was the inception of disciplinary proceedings against the appellant, which thence forward proceeded concurrently with other events which call for description, it is convenient at this stages to set out the provisions of the Legal Profession Act which are relevant to this appeal —

"84.—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding two years or censured.

(2) Such due cause may be shown by proof that such person —

(a) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession; or

(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council [viz. the Council of the respondents, the Law Society] under the provisions of this Act as in the opinion of the court amounts to improper conduct or practice as an advocate and solicitor; or

...

(h) has done some other act which would render him liable to be disbarred or struck off the roll of the court or suspended from practice or censured if a barrister or solicitor in England due regard being had to the fact that the two professions are fused in Singapore; or

85.—(1) At the first meeting of the Council held after the 1st day in January in any year, the Council shall appoint an Inquiry Committee comprising five members or former members of the Council of whom three shall constitute a quorum.

(2) Each Inquiry Committee shall hold office until the next Inquiry Committee is appointed.

....

86.—(1) Any application by any person that an advocate and solicitor be dealt with under this Part and any complaint of the conduct of an advocate and solicitor in his professional capacity shall in the first place be made to the Society and the Council shall refer the application or complaint to the Inquiry Committee.

(2) The Supreme Court or any judge thereof or the Attorney-General may at any time refer to the Society any information touching upon the conduct of a solicitor in his professional capacity and the Council shall issue a written order to the Inquiry Committee.

87.—(1) Where the Inquiry Committee has —

(a) received a written order;

(b) decided of its own motion to inquire into any matter; or....

it shall inquire into and investigate the matter and report to the Council on the matter.

....

(5) Before any inquiry or investigation begins in respect of any matter —

(a) the Inquiry Committee shall post or deliver to the advocate and solicitor concerned —

(i) copies of any written application or complaint and of any statutory declarations or affidavits that have been made in support of the application or complaint; and

(ii) a notice setting out any or any further particulars that may be necessary to disclose the reason for the inquiry or investigation and inviting the member concerned, within such period (not being less than fourteen days) as may be specified in the notice, to give to the Inquiry Committee any written explanation he may wish to offer and to advise the Inquiry Committee if he wishes to be heard by the Committee; and

(b) the Inquiry Committee shall allow the time specified in the notice to elapse and shall give the advocate and solicitor concerned reasonable opportunity to be heard if he so desires and shall give due consideration to any explanation he may make.

....

88.—(1) The Council shall consider the report of the Inquiry Committee and according to the circumstances of the case shall determine —

....

(c) that there should be a formal investigation by a Disciplinary Committee; or ....

....

90. If the Council determines under section 88 of this Act that there should be a formal investigation the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter.

91.—(1) The Chief Justice may from time to time appoint a committee from among solicitors who have in force a practising certificate to be known for the purpose of this Act as a Disciplinary Committee.

(2) A Disciplinary Committee shall consist of such number of members not being less than three nor more than five as the Chief Justice may from time to time think fit and shall be appointed in connection with one or more matters or for a fixed period of time or as the Chief Justice may think fit.

....

93.—(1) After hearing and investigating any matter referred to it a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine —

....

(c) that cause of sufficient gravity for disciplinary action exists under that section.

....

(3) The findings and determination of the Disciplinary Committee under this section shall be drawn up in the form of a report of which —

(a) a copy shall be submitted to the Chief Justice and the Society; and

(b) a copy shall on request be supplied to the advocate and solicitor concerned and to the person who made the application or complaint.

94.—(1) If the determination of the Disciplinary Committee under section 93 of this Act is that cause of sufficient gravity for disciplinary action exists under section 84 of this Act the Society shall without further direction or directions proceed to make an application in accordance with the provisions of section 98 of this Act.

....

98.—(1) An application that a solicitor be struck off the roll or suspended from practice or censured or that he be required to answer allegations contained in an affidavit shall be made by originating summons *ex parte* for an order calling upon the solicitor to show cause.

(2) An application under subsection (1) of this section may be made to a judge and shall include an application for directions as to service if the solicitor is believed to be outside Singapore.

(6) The application to make absolute and the showing of cause consequent upon any order to show cause made under subsections (1) and (2) of this section shall be heard by a court of three judges of whom the Chief Justice shall be one and from the decision of that court there shall be no appeal except to the Judicial Committee of Her Britannic Majesty's Privy Council. For the purposes of an appeal to that Committee an order made under this subsection shall be deemed to be an order of an appellate court.

...."

The inception of the disciplinary proceedings against the appellant appears from information made available to their Lordships, though it was not before the High Court, having been obtained from the respondents on behalf of the appellant subsequent to the hearing in the High Court, and being made the foundation of an addition to the appellant's case to their Lordships. On August 15, 1972 the Attorney-General by a letter to the President of the respondents (Law Society) made a complaint against the appellant pursuant to section 86(2) of the Legal Profession Act. Apparently the complaint referred both to the writing of the letter of August 3, 1972 and the "causing of the files to disappear" — *i.e.* to the subject matter of both the first and the second charges made against the appellant on August 15, 1972. Since the appellant had not at that time been convicted of any criminal offence (section 84(2)(a)), the complaint of the Attorney-General must have been with a view to action under section 84(2)(b) or (h).

On August 17, 1972 the respondents issued a written order to the Inquiry Committee under section 86(2). The Inquiry Committee gave the appropriate notice to the appellant under section 87(5) of the complaint made against him. They then proceeded under section 87(1) to inquire into and investigate the complaint. Having done so, they reported to the respondents pursuant to section 87(1) on September 21, 1972. The respondents, pursuant to section 88(1), considered the Report of the Inquiry Committee and determined that there should be a formal investigation by a Disciplinary Committee. Accordingly, pursuant to section 90, they applied to the Chief Justice on October 4, 1972 for the appointment of a Disciplinary Committee; and on October 7, 1972 the Chief Justice, by virtue of section 91, appointed a Disciplinary Committee "to hear and investigate a complaint dated August 15, 1972 from the Attorney-General. ..."

On October 24, 1972, in the First Magistrate's Court, Singapore, the appellant, who was represented by counsel, pleaded guilty to the first charge against him (instigating the dishonest removal of property), and then, having admitted committing the offence the subject of the second charge (causing evidence to disappear), with the consent of the prosecution applied for the subject-matter of the second charge to be taken into consideration pursuant to section 171(1) of the Criminal Procedure Code (Cap. 113). The appellant alleges that he took this course in consequence of plea-bargaining; and it was disputed before their Lordships that he was guilty of either offence alleged against him. The learned judge on October 24, 1972 in fact took into account the fact that the prosecution had elected to proceed only on the first (less serious) charge, of which he convicted the appellant and, after considering matters urged in mitigation, sentenced the appellant to one day's imprisonment (the day in court) and a fine of $4,000.

Their Lordships now return to matters which were not before the High Court, but were raised by the appellant's Supplemental Case. It appears that on October 24, 1972 (the very day of the appellant's conviction and admission) the Inquiry Committee considered these matters. Presumably the same Committee was still holding office by virtue of section 85(2), and decided to act of its own motion under section 87(1)(b). It is alleged on behalf of the appellant, and not disputed on behalf of the respondents, that the Inquiry Committee failed to give the appellant notice of this new or renewed inquiry or investigation, as was, it is alleged, required of the Committee by section 87(5). It was contended before their Lordships on behalf of the appellant that this failure vitiated all subsequent disciplinary proceeding against the appellant.

It would appear that the Inquiry Committee inquired into the matter of the appellant's conviction and admission of October 24, 1972 and reported to the respondents, pursuant to section 87(1), and that the respondents considered the report pursuant to section 88(1) and determined pursuant to section 88(1)(c) that there should be a formal investigation by a Disciplinary Committee; because (so it is alleged and not disputed) the respondents on November 7, 1972 applied to the Chief Justice to appoint the same Disciplinary Committee as that previously appointed; and certainly the Chief Justice (who was, of course, ignorant of any procedural irregularity) did on November 10, 1972 appoint that same Disciplinary Committee, this time "to hear and investigate [the appellant's] conviction and sentence" "which sentence took into consideration another charge against" the appellant — both charges being set out in full in the appointment.

Before the Disciplinary Committee nominated by the Chief Justice sat to investigate the case against the appellant, the respondents put in a written Statement of Case. It set out in summary form the facts and the circumstances giving rise to conviction and sentence of the appellant, and at the hearing they put in a certified copy of the record of the criminal proceedings of October 24, 1972.

The respondents' submissions were as follows: (1) the appellant had been convicted of a criminal offence, implying a defect of character which made him unfit for his profession, within the Legal Profession Act, section 84(2)(a); (2) the appellant had been guilty of grossly improper conduct in the discharge of his professional duty, within the Legal Profession Act, section 84(2)(b); (3) the appellant had been guilty of such conduct as would render him liable to be disbarred or struck off the Roll of the Court, etc., within the Legal Profession Act section 84(2)(h); and (4) accordingly the appellant should be dealt with under the Legal Profession Act, section 84(1).

The appellant put in a written Reply to the respondents' Statement of Case. In this he admitted all the material allegations of fact contained in the respondents' Statement of Case and also that he had been convicted of a criminal offence, implying a defect of character which made him unfit for his profession. However, the Reply maintained:— (1) he had caused the files to be removed because he thought they might be useful to the preparation of the defence of Abdul Gaffar and V. K. S. Narayanan and that he had caused lists of such removed files to be made out by Gemini's employees; (2) he wrote the letter of August 3, 1972 in the best interests of his client without any intention to violate the law; and (3) all his actions were prompted strictly in the interests of his clients and his conduct had not caused damage or loss to anyone. The Reply ended with an expression of apology for the conduct which he had admitted, and by a plea for leniency.

Before the Disciplinary Committee had met to consider the case against the appellant, they sat on December 7 to consider allegations concerning Francis T. Seow. The appellant was called as a witness and was cross-examined on behalf of Seow. His evidence included the following:

"*Q.* Did you want to hide the files from the Police?
A. I did not want the files to be made available to the Police.
Q. I put it to you that you wanted to keep these files from the Police?
A. Yes. I did not want the Police to have them. Seow disagreed with me."

At a preliminary hearing by the Disciplinary Committee considering the appellant's case on January 31, 1973, the Chairman of the Committee addressed the appellant's counsel as follows:

"... we constituted the Committee in the Inquiry of Mr. Francis T. Seow, and . . the findings of that Inquiry have been submitted".

Counsel for the appellant said that no material allegation was challenged and that he would be calling no witness, so that the Committee would not be involved in any findings of fact. He asked for an adjournment for the purpose of making a plea in mitigation. This was granted. The admissions made by the appellant on December 7, 1972 were thus without objection, known to the Disciplinary Committee concerned with the appellant's conduct.

When the Disciplinary Committee met, on March 10, 1973, to resume consideration of the allegations against the appellant, his counsel made submissions on his behalf. He admitted that the appellant had been convicted and sentenced as alleged, that the facts upon which such conviction and sentence were based had occurred as alleged, and that the appellant had respectively pleaded guilty to and admitted the two charges. Nevertheless, it was submitted to and argued before the Disciplinary Committee that (1) the facts the subject of the first charge did not disclose an offence in law, because the appellant, in writing the letter of August 3, 1972, had acted merely as a "conduit pipe" and in consequence had not "instigated" the commission of an attempt in the legal sense of having actively stimulated the same; (2) the Petition in Singapore to wind up Gemini having no effect in Malaysia, the appellant had taken the view that the assets of Gemini in Malaysia were not affected by the winding-up Petition, and, in writing the letter of August 3, 1972, he had desired only to help his clients and not to break the law; (3) the conviction of a criminal offence is not in itself sufficient to imply a defect of character making the advocate unfit for his profession within the provision of section 84(2)(a), but that consideration ought to be given to (a) the nature of the offence, (b) its circumstances and (c) the fact that the convicted person may have admitted guilt wrongly, as the appellant allegedly did, in order only to avoid the risk of being sentenced to a period of imprisonment (*i.e.* in the course of plea-bargaining); (4) the appellant had not committed the offence the subject of the second charge, since he had not caused the files "to disappear," in the sense of having caused them to be removed permanently or for so long that they could not be used as evidence in court for proving an offence.

The Report of the Disciplinary Committee was in writing dated April 23, 1973. After setting out the complaints against the appellant, the submission to the Committee and the facts of the case, the Disciplinary Committee held that it could not go behind the appellant's plea of guilty to the first charge and admission of the facts of the second charge. The Disciplinary Committee rejected the legal submissions made on behalf of the appellant with regard to the files; they held that, as the appellant had admitted to removing the files with the intent set out in the second charge, the fact that they were missing for at most two weeks was irrelevant. Their conclusions were as follows: (1) the appellant, in writing and issuing the letter of August 3, 1972, was guilty of grossly improper conduct in the discharge of his professional duty within the provision of section 84(2)(b); (2) the offence of which the appellant had been convicted implied a defect of character which made him unfit for his profession within the provision of section 84(2)(a); (3) the appellant, "in causing or attempting to cause" the files to disappear was guilty of grossly improper conduct in the discharge of his professional duty within the provision of section 84(2)(b); (4) no finding could be made under section 84(2)(h) in the absence of any evidence as to the likely

attitude of the Bar Council or the Law Society in England; and (5) cause of sufficient gravity existed for disciplinary action under section 84.

On May 25, 1973, on the application of the respondents, it was ordered that the appellant should show cause why he should not be dealt with under the provisions of section 84. On June 28, 1973 the appellant swore an affidavit to show such cause. Their Lordships need not advert to certain inaccuracies in that affidavit nor to its repetition of the submissions previously made on behalf of the appellant. But in his affidavit the appellant now, for the first time, made two new submissions. First, with reference to the letter of August 3, 1972, he said that Abdul Gaffar had instructed him to dispose of moveable property situated in Malaysia belonging to him, Abdul Gaffar, in order that such property should not be stolen in the confusion following his arrest; that, due to extreme pressure of work, the appellant had mistakenly referred in the letter to the property in Malaysia that was to be disposed of as Gemini's property instead of Abdul Gaffar's; and that, before writing the letter, he had referred to a passage in *Dicey's Conflict of Laws* regarding the effect of the presentation of a Petition for winding up of a company on the property of such company outside the jurisdiction of the court in which the Petition is presented (which would, of course, be irrelevant if it were indeed Abdul Gaffar's property and not the company's which was in question). Secondly, with regard to the files, the appellant deposed that, on August 15, 1972 when the police attended at the office of Francis T. Seow with a warrant for the appellant's arrest and search warrants the following incident took place:

"...Francis Seow ... made several telephone calls to the Minister of Law, the Senior District Judge and the Attorney-General. In the course of his telephone conversation with the Attorney-General, he asked me 'Isaac, are there any more Gemini files in the office?'. I, believing that there were none, replied to him to that effect. He thereupon gave an undertaking to the Attorney-General that there were no other files relating to the Company in our chambers.";

but that, on returning to the office on August 15, 1972 after having been arrested and charged, he discovered two files which he said had been left in his custody earlier by M. Rashad and collected the following day by Rashad; that those two files were never the subject matter of any charge against him, having come to light only after the two charges had been preferred against him on August 15, 1972; that he had unsuccessfully tried to draw attention to this fact in the criminal proceedings against him, but that all concerned (including his own counsel) had mistakenly proceeded on the basis that those two files were part of the subject matter of the second charge.

Proceedings having been duly taken under section 98(1) and (2) the matter came before the High Court presided over by the Chief Justice under section 98(6) on July 2, 1973. The appellant was cross-examined as to his alleged mistaken reference in the letter of August 3, 1972 to Gemini's properties instead of Abdul Gaffar's having been made for the first time in his affidavit of June 28, 1973, and as to the significance in this respect of his alleged reference to *Dicey*. He was also cross-examined about the admissions he had made during the enquiry into the complaints made against Francis T. Seow.

The judgment of the court was delivered by the Chief Justice. The court disbelieved the appellant's assertion that the reference to the property of Gemini was an unintentional mistake. Dealing first with the charge under section 84(2)(a) based on the appellant's conviction, the High Court, unlike the Disciplinary Committee, assumed that they were entitled to look behind the conviction in order to see whether it had been properly made. Having done so, the court was of opinion that there was no error, and that on the admitted facts the District Judge was entitled to accept the appellant's plea of guilty. The court rejected the two arguments which had been advanced in relation to this conviction. First, it had been argued that the relevant definition of "abets" in section 107 of the Penal Code involved the accused having instigated the doing of the questioned act, and that a solicitor or counsel who merely acts on his client's instructions is not an instigator. Secondly, it was argued on behalf of the appellant that "abets" in section 108A of the Penal Code, under which the appellant was convicted, on a proper construction does not apply to the dishonest removal of property outside Singapore. Their Lordships will consider these points in greater detail in due course. It had also been argued on behalf of the appellant that, in all the circumstances, the convictions could not be said to imply a defect of character in the appellant which made him unfit for his profession within section 84(2)(a). The court held that the nature of the offence is the sole criterion in determining whether or not an advocate or solicitor comes within the provision of section 84(2)(a); and that the offence in question was one which clearly implied such a defect of character.

The learned Chief Justice did not specifically deal with the contention put forward on behalf of the appellant in the High Court, as it had been before the Disciplinary Committee, that the appellant had not in law caused the files "to disappear", in that they were not removed permanently or for so long that they could not be used as evidence in court for proving an offence. However, the court clearly rejected this contention, since the judgment concluded with the following passage:

"Finally, having considered all the circumstances including his admission of having committed another serious criminal offence we were in no doubt that the extreme penalty ought to be imposed and we accordingly ordered that the Respondent [the appellant before their Lordships] be struck off the Roll and that he should bear all the costs of the Law Society."

The High Court having granted leave to appeal to this Board, their Lordships now turn to consider the arguments advanced before them.

The failure to comply with section 87(5)

This issue was not before the High Court for the reasons heretofore set out. It was claimed on behalf of the appellant that the failure by the Inquiry Committee to notify the appellant before they investigated his conviction and admission of October 24, 1972 vitiated their report thereon, and that all subsequent proceedings were also thereby vitiated. Their Lordships have no doubt that the Inquiry Committee were under a statutory obligation to have given the appellant

notice under section 87(5) of their investigation of their own motion of his conviction and admission, which were not, of course, the subject matter of the original complaint by the Attorney-General, not having yet taken place. Whether the investigation and report of Inquiry Committee on the conviction and admission were vitiated depends on whether the provisions of section 87(5) are to be construed as imperative or directory as these terms are used in this branch of the law. The difference between imperative and directory provisions was explained by Lord Penzance in *Howard* v. *Bodington*[1] at page. 210:

"A thing has been ordered by the legislature to be done. What is the consequence if it is not done? In the case of statutes that are said to be imperative, the courts have decided that if it is not done the whole thing fails, and the proceedings that follow upon it are all void. On the other hand, when the courts hold a provision to be ... directory, they say that, although such provision may not have been complied with, the subsequent proceedings do not fail."

Lord Penzance went on to discuss how courts ascertain whether a provision is imperative or directory. After quoting Lord Campbell in *Liverpool Borough Bank* v. *Turner*,[2] he said:

"... in each case you must look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be procured by the Act; and upon a review of the case in that aspect decide whether the matter is ... imperative or only directory."

In *Marsh* v. *Marsh*[3] Lord Goddard, delivering the judgment of the Privy Council, said at page 284:

"No court has ever attempted to lay down a decisive test for distinguishing between the two classes of irregularities, nor will their Lordships attempt to do so here, beyond saying that one test that may be applied is to inquire whether the irregularity had caused a failure of natural justice."

There can be no question of a failure of natural justice in the case under instant consideration. Whatever the appellant had to say to the Inquiry Committee about his conviction and admission, the Inquiry Committee would have been bound to have reported what had taken place, and the appellant would have had to have given his explanation, as in fact he did, to the Disciplinary Committee. But their Lordships do not think that it is right, in determining whether a provision is imperative or directory, to consider merely whether there has been a failure of natural justice in the case under instant consideration; nor do they think that that is what Lord Goddard meant. Section 87(5) must be construed as either imperative or directory for all cases which it affects, as the citation from Lord Penzance's judgment suggests. Although the instant appellant suffered no prejudice nor failure of natural justice there could well be cases where serious prejudice might be suffered and omission to give notice might well result in such a failure. It is no light matter for a professional man to have to appear before a Disciplinary Committee of his professional body. The person who is the subject matter of enquiry might well have such an answer as to ensure that the report of the Inquiry Committee so exculpates him that the Law Society may determine either that no formal investigation is necessary section 88(1)(a)) or that the case may be met by a small penalty under section 88(1)(b) and section 89. (Their Lordships have not thought it necessary to set out these provisions, which sufficiently appear from the foregoing.)

Their Lordships therefore consider that section 87(5) should be construed as an imperative provision. This involves that the second inquiry by the Inquiry Committee was a nullity. But it by no means follows that all the subsequent proceedings before the Disciplinary Committee or the High Court were nullities. There was no defect in the first investigation by the Inquiry Committee on the complaint of the Attorney General (which resulted in the Report of the Inquiry Committee of September 21, 1972), nor in the respondents' consideration of that Report or their application for the appointment of a Disciplinary Committee on October 4, 1972, nor in the appointment of such Disciplinary Committee by the Chief Justice on October 7, 1972. The Disciplinary Committee, in investigating the complaints of the Attorney-General, would inevitably have had to consider what had happened in court on October 24, 1972 in determining whether the appellant was guilty of improper conduct within section 84(2)(b) — quite irrespective of its relevance under section 84(2)(a). An acquittal on October 24, 1972 would have been highly relevant to whether the conduct complained of was "improper conduct." So too, necessarily, the conviction on a plea of guilty and the admission of the second charge. The same considerations apply also to the subsequent hearing by the High Court.

Instigating the dishonest removal of property

Their Lordships do not need to set out section 424 of the Penal Code, which deals with the dishonest or fraudulent removal or concealment of property. The appellant pleaded guilty to instigating such offence; and in order or appreciate the arguments heard on behalf of the appellant it is necessary to set out two sections from Chapter V of the Penal Code, which deals with abetment:

"107. A person abets the doing of a thing who—(a) instigates any person to do that thing....

108A. A person abets an offence within the meaning of this Code who, in Singapore, abets the commission of any act without and beyond Singapore which would constitute an offence if committed in Singapore.

Illustration

A, in Singapore, instigates B, a foreigner in Java, to commit murder in Java. A is guilty of abetting murder."

There is a preliminary point which arises — namely, whether in disciplinary proceedings under the Legal Profession Act it is open, for the purposes of section 84(2)(a) (conviction implying a defect of character), to go behind the conviction and enquire whether it was correctly made. The Disciplinary Committee held that it was not open to them to go behind the conviction. The High Court assumed that it was open to them to go behind the conviction; though, having done so, they held that the appellant was rightly convicted. It is, strictly, unnecessary for their Lordships to express an opinion on this point; in view of the procedural irregularity (which was not known to the High Court) the relevance of the conviction was not to section 84(2)(a) but to section 84(2)(b) (improper conduct). But, since the matter was fully argued before their Lordships, they think it proper to state that they agree with the view of the High Court. They would, however, add this rider. Although it is open to go behind the conviction, this would only be justified in

exceptional circumstances. Their Lordships will not attempt to lay down what circumstances should be considered so exceptional as to permit the question whether the accused had been rightly convicted to be raised, beyond saying that an important consideration would be whether an appeal against the conviction had been available. For example, if a plea of guilty had been made under a misunderstanding, and there was no opportunity of rectifying it on appeal, justice would demand that the conviction should not be conclusive against the accused in the course of disciplinary proceedings, the object of which themselves is, after all, to promote justice.

In the instant case their Lordships, like the High Court, have considered the argument that the appellant was not correctly convicted.

The argument raised in the Disciplinary Committee and the High Court that a legal representative, being a mere "conduit pipe" for his client, cannot be guilty of criminal instigation within the meaning of the Penal Code when he merely passes on his client's instructions was not resuscitated before their Lordships. Instead, the argument was put in two ways. First, it was said that "instigates" implies communication: there was no communication in Singapore; communication only took place when the letter was received in Kuala Lumpur: (See Ranchhoddas and Thakore, *The Law of Crimes*,* 21st. ed. Bombay 1966, page 251, commenting on the similar provision of the Indian Penal Code); in consequence no criminal offence was committed within the jurisdiction of the Singapore Court. Secondly, it was said that no offence was committed under section 108A, because under that section there must be a notional transfer of all relevant circumstances (see *Cox* v. *Army Council*).[4] You must imagine a company carrying on business in Singapore, but incorporated abroad and its head office abroad; a Petition to wind it up in its place of incorporation but no such Petition in Singapore; and the manager of the company in Singapore receiving from the managing director abroad instructions such as were contained in the appellant's letter of August 3, 1972. In such circumstances, it was argued, there would have been no abetment of an offence in Singapore.

Before considering these arguments their Lordships would remark that they are highly technical defences, even if valid; and, as such, would only have marginal significance to the consideration of the appellant's conduct under the Legal Profession Act, section 84(2)(b).

The word "instigates" no doubt often, perhaps generally, connotes communication. But it can also be used more loosely — *i.e.*, looked at from the point of view of the alleged instigator. In this respect it is like the word "demand" in the English Theft Act 1968, section 21(1), which was considered in *Treacy* v. *D.P.P.*.[5] There the Court of Appeal and the majority of the House of Lords held that a demand was made when a letter of demand was written in England, and that there was no requirement that it should be communicated to the person of whom the demand was made (who was abroad). This sense of "instigates" in section 107 of the Penal Code is borne out by the Illustration to section 108A: sections 107 and 108A must be construed together. The relevance of Illustrations in such a Penal Code was indicated in *Mohamed Syedol Ariffin* v. *Yeoh Ooi Gark*,[6] where a provision of a Straits Settlements Ordinance fell for construction. At page 581 it was said:

> "... it is the duty of a court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption".

The Illustration to section 108A, in the light of this passage, in their Lordships' view also completely disposes of the argument on behalf of the appellant based on *Cox* v. *Army Council*.

There is only one other matter that their Lordships need notice under this head. The appellant had argued before the High Court that, on the facts and having regard to all the circumstances, his conviction could not be said to imply a defect of character making him unfit for his profession within section 82(2)(a) of the Legal Profession Act. The High Court held that the nature of the offence is the sole criterion in determining whether or not an advocate and solicitor comes within the provisions and that the offence in question was one which clearly implied such a defect of character in the appellant. This construction of the statutory provision by the High Court, and the conclusion therefrom, were barely controverted before their Lordships. On the view which their Lordships have taken, the appellant's conviction (or, more importantly, the admitted conduct which led to such conviction) was relevant under the circumstances to section 84(2)(b) rather than (a). But, did the matter fall for necessary decision, their Lordships would be in no way disposed to disagree with the construction adopted by the High Court. Of course, the mere "nature" of the offence will often be of little guidance to the moral obliquity actually involved. But it is in the penalty that the court will have regard to the moral obliquity.

Their Lordships are in agreement with the High Court that the admitted facts before the learned District Judge justified his acceptance of the appellant's plea of guilty.

Causing files to disappear

This was the subject matter of the second charge, laid under section 201 of the Penal Code. This reads as follows:

> "201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall

* *Ratanlal* on Crimes

be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine, and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

The appellant admitted the charge under this section on October 24, 1972 and asked the court to take it into consideration in passing sentence on the first charge (instigating dishonest removal of property) to which he had pleaded guilty. It was nevertheless argued before the High Court and before their Lordships that the appellant had committed no offence under section 201. His case was put in two ways: first, "disappear" involves removing evidence permanently or for so long that it cannot be used in the legal proceedings to which it was relevant, which was not the case with any of the files with which the appellant was concerned; and, secondly, the District Judge. the Disciplinary Committee (and, by inference, the High Court) were all under the erroneous impression that the subject matter of the second charge were the two Rashad files, and that no court or tribunal has ever considered whether the appellant did, as charged, on August 2 or 3, 1972 cause files to disappear.

The argument on the word "disappear" was based partly on what was alleged to be the ordinary use of that term — namely, "cease to be visible or traceable" — partly on the Indian case of *Harbans Lal* v. *The State*.[7] But their Lordships consider that the word "disappear" in section 201 must be contrasted with the words "secrete or destroy" in section 204. For the purpose of section 201 the degree or length of the secretion of the evidence is immaterial, provided that the evidence in question is for a time caused to escape the vigilance of those who are seeking it as evidence. This accords with the apparent purpose of the section; and the sense of "disappear" involved is well within the ordinary meaning of the word. Their Lordships do not think that *Harbans Lal* v. *The State* would necessarily be followed in other jurisdictions.

Moreover, the appellant was not in fact on October 24, 1972 convicted of an offence under section 201. This charge, therefore, was never relevant to section 84(2)(a) of the Legal Profession Act, but only to section 84(2)(b). For this purpose the question is whether the appellant was guilty of "grossly improper conduct", not what particular legal label should be attached to that conduct. In the proceedings against Francis T. Seow on December 7, 1972 the appellant admitted that at least part of his purpose in removing the files was to keep them from the Police.

As for the alleged confusion between the files the subject matter of the second charge against the appellant, on the one hand, and the two Rashad files on the other, their Lordships are satisfied that there was indeed such confusion, for which the appellant himself must bear the primary responsibility. The confusion can be seen from the reference in the report of the Disciplinary Committee of April 23, 1973 to "the fact that the files... were missing for only two weeks" — which was itself based on the submission made on behalf of the appellant to the District Judge on October 24, 1972. But, again in relation to this part of the argument, it must be observed that what is relevant is whether the appellant was guilty of grossly improper conduct. On December 7, 1972 the appellant admitted that his dealing with the files was at least partly motivated by his desire that the Police should not have them. Their Lordships think that the context shows clearly that it was the files removed on August 2, 1972 which were in question.

Their Lordships therefore consider that the High Court was entitled to conclude that the appellant was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Legal Profession Act. The conclusion of the High Court that part of that conduct fell also within section 84(2)(a) was vitiated by an earlier procedural error; but this is, in their Lordships' view, immaterial, in view of the fact that it was throughout relevant to and valid as regards section 84(2)(b).

The sentence

It was submitted to their Lordships that the penalty inflicted upon the appellant by the High Court was excessive. But their Lordships consider that only a Court conversant with the local conditions can judge of the appropriateness of the penalty in circumstances such as the present. Their Lordships would merely emphasise once more that what the High Court was concerned with was professional conduct and standards.

Their Lordships therefore dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Charles Russell & Co.; Jaques & Co.*